

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Modular Space Corporation
1200 Swedesford Road
Berwyn, PA 19312-1172

(b) County of Residence of First Listed Plaintiff Chester County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert R. Watson, Jr.
Eastburn and Gray, PC
470 Norristown Rd., Ste 302
Blue Bell, PA 19422
(215) 345-7000

DEFENDANTS

Capital Contractors, Inc.
One CA Plaza, Suite 101
Islandia, NY 11749

County of Residence of First Listed Defendant Suffolk County, NY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 PTF ☐ 1 DEF
- Citizen of Another State ☐ 2 ☒ 2
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6
- Incorporated or Principal Place of Business In This State ☒ 4 PTF ☐ 4 DEF
- Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC sec 1332

VI. CAUSE OF ACTION

Brief description of cause:
Breach of construction cleaning contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 300,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 8/29/16 SIGNATURE OF ATTORNEY OF RECORD

Robert R. Watson, Jr.

PA ID 83787

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AUG 29 2016

FOR THE UNITED STATES DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Modular Space Corporation, 1200 Swedesford Road, Berwyn, PA 19312-1172

Address of Defendant: Capital Contractors, Inc., One CA Plaza, Suite 101, Islandia, NY 11749

Place of Accident, Incident or Transaction: Hanover Township, Morris County, New Jersey

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases
(Please specify) breach of contract

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Robert R. Watson, Jr., counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 8/29/16

Ju-Zu-Ju for RR Watson Jr.
Attorney-at-Law
NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

PA ID 83787

Attorney I.D.#

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 8/29/16

Ju-Zu-Ju for RR Watson Jr.
Attorney-at-Law
PA ID 83787
Attorney I.D.#

CIV. 609 (5/2012)

AUG 29 2016

JS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

MODULAR SPACE CORPORATION

v.

CAPITAL CONTRACTORS, INC.

CIVIL ACTION

NO.

16

4683

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

8/29/16 *John V. Spuehl for RW* Plaintiff
 Date Attorney-at-law Attorney for
 215-345-7000 215-542-9421 rwatson@eastburngray.com

Telephone

FAX Number

E-Mail Address

(Civ. 660) 10/02

AUG 29 2016

FILED AUG 29 2016

JS

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MODULAR SPACE CORPORATION,
1200 Swedesford Road
Berwyn, Pennsylvania 19312-1172

Plaintiff,

v.

CAPITAL CONTRACTORS, INC.
One CA Plaza, Suite 101
Islandia, New York 11749

Serve: National Corporate Research, Ltd.
10 East 40th Street
New York, New York 10016

Defendant.

16 4683
Civil Action No. _____

COMPLAINT

Plaintiff, Modular Space Corporation, d/b/a ModSpace, for their Complaint against Defendant, Capital Contractors, Inc. ("CCI"), alleges as follows:

PRELIMINARY STATEMENT

1. This case concerns property damage caused by CCI at the Red Bull Phase II construction project in Hanover Township, New Jersey. Plaintiffs seek damages for breach of contract and negligence for property and water damage caused by CCI during the final cleaning of the project.

PARTIES

2. ModSpace is a Delaware corporation that provides general contracting, design-build, and construction management services to its clients. ModSpace's principal place of

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business and corporate offices are located at 1200 Swedesford Road, Berwyn, Pennsylvania 19312.

3. Upon information and belief, CCI is a New York corporation with its principal place of business at One CA Plaza, Suite 101, Islandia, New York 11749.

JURISDICTION AND VENUE

4. Jurisdiction is appropriate in this Court pursuant to 28 U.S.C. § 1332(a), because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of foreign States.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a), because Defendant regularly conducts business in this judicial district, and Defendants are subject to personal jurisdiction in this district. Moreover, the contract between Plaintiff and Defendant provides that Defendant “submits to jurisdiction and venue of courts having situs in the Eastern District of Pennsylvania or Chester County.”

FACTS COMMON TO ALL COUNTS

6. On or about September 15, 2014, ModSpace entered a professional services agreement (“the Prime Contract”) with Red Bull Arena, Inc. (“RBA”).

7. Under the Prime Contract, ModSpace contracted to provide RBA with certain manufacturing, installation, and related services in connection with pre-fabricated buildings to be erected for a soccer training facility in Hanover Township, New Jersey (the “Project”).

8. In its role as the contractor, ModSpace entered into a Purchase Order with CCI to perform the final cleaning of the constructed Project prior to turnover to the RBA.

9. On August 3, 2015, CCI commenced the cleaning at the Project. During the performance of CCI's work, CCI caused property and water damage to the facility and various building components at the Project (the "Property Damage").

10. ModSpace immediately notified CCI of the Property Damage and CCI acknowledged responsibility.

11. RBA contended that ModSpace was legally liable for the Property Damage that CCI caused and demanded that ModSpace repair the damage and remediate the Project (the "Claims").

12. The Purchase Order provides that CCI must indemnify and hold ModSpace harmless from Claims like those described in Paragraph 11, above, when arising out of or relating to their services on the Project.

13. ModSpace notified CCI of the Property Damage and RBA's Claims and demanded that CCI prepare a remediation plan, along with a proposed schedule, to repair the Property Damage and remediate the Project.

14. Despite its acceptance of responsibility and despite demand by ModSpace, CCI failed to adequately respond to the situation, repair the Property Damage, and remediate the Project.

15. As a result of CCI's failure, ModSpace undertook the appropriate and necessary actions to repair the Property Damage caused by CCI and remediate the Project for turnover to RBA. To date, ModSpace has incurred direct costs of \$248,926.04.

COUNT I
Breach of Contract

16. ModSpace incorporates Paragraphs 1 through 15 as if fully set forth herein.

17. As set forth above, CCI breached the Purchase Order by causing Property Damage during its cleaning operations at the Project.

18. CCI also breached the Purchase Order by failing to indemnify and hold ModSpace harmless from and against any and all liability, loss, cost, damage, or expense (including attorneys' fees) arising out of or relating to CCI's services on the Project.

19. As a direct and proximate result of CCI's breaches of the Purchase Order, ModSpace has suffered, or will suffer, direct damages in the principal amount not less than \$300,000, plus interest and attorneys' fees.

20. ModSpace has satisfied all conditions precedent to bringing this claim or any alleged conditions precedent have been waived by CCI.

WHEREFORE, Modular Space Corporation requests that it be awarded a judgment under Count I against Capital Construction, Inc., thereby entitling Modular Space Corporation to recover damages in an amount in excess of \$300,000, plus interest, costs, and attorneys' fees.

COUNT II
Negligence

21. ModSpace incorporates Paragraphs 1 through 15 as if fully set forth herein.

22. At all relevant times, CCI owed ModSpace a duty to perform its services properly and commensurate with the prevailing standard of care.

23. CCI breached duties owing to ModSpace by, among other things, causing Property Damage at the Project.

24. CCI's failure to perform the services properly and commensurate with the prevailing standard of care, caused property and water damage to the facility and various building components at the Project.

25. As a direct and proximate result of CCI's negligence, ModSpace has suffered damages.

WHEREFORE, Modular Space Corporation requests that it be awarded a judgment under Count II against Capital Construction, Inc., thereby entitling Modular Space Corporation to recover damages in an amount in excess of \$300,000, plus interest, costs, and attorneys' fees.

COUNT III
Unjust Enrichment

26. ModSpace incorporates Paragraphs 1 through 15 as if fully set forth herein.

27. ModSpace conferred a benefit upon CCI by performing work that was included in CCI's scope of work to be performed at the Project and by undertaking the appropriate and necessary actions to repair the Property Damage caused by CCI and remediate the Project for turnover to RBA.

28. CCI was aware of, and had knowledge of, the benefit conferred upon it by ModSpace.

29. CCI has accepted and retained the value of the benefits conferred upon it by ModSpace without paying ModSpace for those benefits, rendering it inequitable for CCI to retain the benefits provided by ModSpace.

30. The reasonable value of the benefit received by CCI for which CCI has been unjustly enriched exceeds \$300,000.

WHEREFORE, Modular Space Corporation requests that it be awarded a judgment under Count III against Capital Construction, Inc., thereby entitling Modular Space Corporation to recover damages in an amount in excess of \$300,000, plus interest, costs, and attorneys' fees.

COUNT IV
Quantum Meruit

31. ModSpace incorporates Paragraphs 1 through 15 as if fully set forth herein.

32. ModSpace rendered valuable labor, materials, and equipment totaling in excess of \$300,000 to complete CCI's scope of work to be performed at the Project and by undertaking the appropriate and necessary actions to repair the Property Damage caused by CCI and remediate the Project for turnover to RBA.

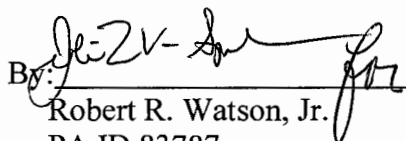
33. CCI accepted and received the benefit of the labor, materials, and equipment and did so knowing that ModSpace expected to be paid for those materials and services.

34. All materials and services rendered by ModSpace were rendered under such circumstances that CCI knew that ModSpace expected to be paid.

35. The reasonable value of the work performed by ModSpace for which CCI has failed to pay ModSpace is in excess of \$300,000.

WHEREFORE, Modular Space Corporation requests that it be awarded a judgment under Count IV against Capital Construction, Inc., thereby entitling Modular Space Corporation to recover damages in an amount in excess of \$300,000, plus interest, costs, and attorneys' fees.

EASTBURN AND GRAY, PC

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Pro Hac Vice Motion Pending

Counsel for Plaintiff